



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
LAYFIELD & BARRETT, APC,
Debtor.

Case No: 2:17-bk-19548-NB

Adv. No.: 2:17-ap-01503-NB

Chapter: 11

WELLGEN STANDARD LLC,
Plaintiff,
v.

**MEMORANDUM DECISION DENYING
MOTION TO DISMISS COUNTERCLAIMS
AND CROSS-CLAIMS FILED BY JOSEPH
MARTIN BARRETT**

MAXIMUM LEGAL (CALIFORNIA) LLP,
CALIFORNIA ATTORNEY LENDING II, INC.,
MAXIMUM LEGAL LLC, TODD D.
WAKEFIELD, JOSEPH MARTIN BARRETT,
AND RICHARD M. PACHULSKI, TRUSTEE,
Defendants.

Hearing Dates:

Dates: March 20, 2018 & May 1, 2018

Time: 2:00 P.M.

Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012

And related matters

At the dates set forth above this court held hearings on the motion (adv. dkt. 24, the "MTD") by which plaintiff Wellgen Standard LLC (with its predecessor in interest, "Wellgen") seeks to dismiss the counterclaims and crossclaims (adv. dkt. 18, the "Barrett Complaint")

1 included in the answer filed by Joseph Martin Barrett to the complaint filed by Wellgen.¹

2 Appearances were as noted on the record.

3 **1. Background**

4 This Court has reviewed all relevant papers including (1) the Barrett Complaint – which
5 asserts claims for *quantum meruit*, to enforce his alleged attorney’s charging lien, and for
6 declaratory relief (adv. dkt. 18); (2) the MTD and supporting request for judicial notice (adv.
7 dkt. 25) (“RJN”); (3) Mr. Barrett’s opposition to the MTD (adv. dkt. 30) (the “Opposition”); and
8 (4) Wellgen’s reply (adv. dkt. 34).

9 For the reasons stated on the record, this Court orally denied the MTD as to all
10 counterclaims and crossclaims with one exception. This Court took under submission Mr.
11 Barrett’s *quantum meruit* claims regarding a contingency fee recovered in the case styled
12 *Teitelbaum v. Lyft, Inc., et al* (“*Teitelbaum*”).

13 The basis for this Court’s oral ruling was essentially as follows. Given current
14 uncertainty in the law regarding the “unfinished business doctrine” and related legal concepts,
15 and the uncertain facts including precisely when the services were performed, this Court could
16 not conclude as a matter of law that Mr. Barrett would be unable to assert a *quantum meruit*
17 claim. He might be entitled to assert such a claim, even without Wellgen’s consent to his
18 ongoing representation of clients, for services that he performed in his individual capacity, as
19 opposed to services performed either for Debtor or for Maximum Legal (California) LLP (“Max
20 Legal”).² But Wellgen asserts that on the present record Barrett is bound by his declaration
21 that he was still working for Max Legal at the time the *Teitelbaum* matter was settled.

22 _____
23 ¹ For brevity, documents are referred to by docket number and/or trial exhibit number rather than their full title
24 (e.g., “adv. dkt. ___” for documents filed in an adversary proceeding, or “case dkt. ___” for documents filed in the
25 bankruptcy case itself). Unless the context suggests otherwise, references to a “chapter” or “section” (“§”) refer to
26 the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), a “Rule” means one of the
Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, or other federal or local rule, and other
terms have the meanings provided in the Bankruptcy Code, the Rules, and the parties’ filed papers.

27 ² See generally *Jewel v. Boxer*, 156 Cal. App. 3d 171, 203 Cal. Rptr. 13 (Cal. App. 1st Dist. 1984); *Fox v. Abrams*,
28 163 Cal. App. 3d 610, 210 Cal. Rptr. 260 (Cal. App. 2d Dist 1985); *Heller Ehrman LLP v. Davis Wright Tremaine
LLP*, 4 Cal. 5th 467, 229 Cal. Rptr. 3d 371 (2018) (holding that the “unfinished business doctrine does not apply to
hourly fee cases,” but leaving open the question as to contingency fee cases); *In re Van Sickle*, 2006 WL
2465633, 2006 Calif. Op. LEXIS 5, 4 Cal. State Bar Ct. Rptr. 980 (Cal. Bar Ct. Aug. 24, 2006) (appropriate fees
determined by “pro rata formula which distributes the contingent fee among all discharged and existing attorneys

2. Analysis

Except as emphasized below, this Court need not repeat the standard applicable to the MTD, which are well known and well summarized by the parties. Wellgen argues: (1) that the Barrett Complaint does not adequately allege precisely when Mr. Barrett worked on the *Teitelbaum* case; and (2) that this Court can take judicial notice of (a) Mr. Barrett's own declaration filed in this case dated August 1, 2017 (case dkt. 3-1, the "Barrett Declaration") in which he states that he was working at that time for Max Legal and (b) the notice of settlement filed in the *Teitelbaum* case on June 30, 2017, stating that the settlement occurred on June 26, 2017. See Reply, adv. Dkt. 34, page 12, lines 12-18. Although Wellgen states that a copy of the notice of settlement is attached to its Reply, that document is missing. Nevertheless, the parties do not appear to dispute that the notice of settlement recites a date prior to the August 1, 2017 date of the Barrett Declaration, so for purposes of the following discussion this Court assumes without deciding that this is so.

Wellgen acknowledges that, in general, in reviewing the sufficiency of the Barrett Complaint, this Court must accept as true all facts alleged therein and draw all reasonable inferences in favor of Mr. Barrett. See Rule 12(b)(6) (incorporated by Rule 7026); *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). Wellgen also acknowledges (adv. dkt. 24, p.8:1-6) that the Barrett Complaint includes some allegations about when Mr. Barrett worked on the *Teitelbaum* case.

The Barrett Complaint alleges, in relevant part:

208. Around the time of the closure of L&B, efforts were made to form Maximum Legal as a new law firm. In its Complaint, [Wellgen] alleges that Maximum Legal was never validly formed, and never came into existence as a legal entity, such that it never had any right to any attorney's fees or reimbursement of costs.

...

210. Regardless of whether Maximum Legal was ever validly formed, its ostensible existence was short lived. Maximum Legal only purported to operate

in proportion to the time spent on the case by each" on quantum meruit theory); *Grant & Eisenhofer, P.A. v. Brown*, 2017 WL 6343506 at *8, 2017 U.S. Dist. LEXIS 204184, at *24 (C.D. Cal. Dec. 6, 2017); and compare *Geron v. Robinson & Cole LLP*, 476 B.R. 732, 744 (S.D.N.Y. 2012) ("RUPA transformed the law on which *Jewel* relied and eroded the theoretical underpinnings of the *Jewel* doctrine . . ."); and *In re Thelen LLP*, 24 N.Y. 3d 16, 28 (2014) (dissolving firm does not "own anything with respect to a [contingency] matter other than yet-unpaid compensation for legal services already performed.").

as a law firm for approximately two weeks. Maximum Legal then ceased operations, shut down, and sought bankruptcy protection.

211. Barrett disassociated from Maximum Legal shortly after the failure of L&B.

212. Barrett performed valuable services and incurred costs in the *Teitelbaum* matter ... **after** the ostensible existence of Maximum Legal ended, and **after** Barrett disassociated from that entity.

213. The settlements in the above cases have been primarily, if not entirely, the result of Barrett's work on those cases after he departed from L&B, after Maximum Legal ceased to exist, and after Barrett ceased to be associated with Maximum Legal. [Barrett Complaint, adv. dkt. 18, ¶¶ 208-213 (emphasis added)]

Even if Mr. Barrett is unsure about the exact dates, the Barrett Complaint includes sufficient factual allegations to come within this Court's oral ruling as to *quantum meruit* claims. But Wellgen cites authority that this Court can disregard a complaint's allegations in certain circumstances:

Courts need not accept as true allegations that are contradicted by ... judicially noticed materials. See, e.g., *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000); see also *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("The court need not, however, accept as true allegations that contradict matters properly subject to judicial notice or by exhibit."). Courts may also use judicially noticed facts and documents to establish that the complaint fails to state a viable claim for relief. See, e.g., *United States v. Ritchie*, 342 F.3d [903] at 907-08 [9th Cir. 2003]; *Sprewell*, 266 F.3d at 988 (9th Cir. 2001). [MTD (adv. dkt. 24), p. 3:16-23]

Wellgen asks this Court to take judicial notice of the Barrett Declaration, which it characterizes (adv. dkt. 24, pp.7:13-8:6) as stating that after leaving Layfield & Barrett Mr. Barrett was an employee of Max Legal through August 1, 2017. This Court agrees that the declaration cannot reasonably be read otherwise.

As noted above the Barrett Declaration is dated August 1, 2017 – after the *Teitelbaum* settlement was reached – and it states in part:

I, Joseph Barrett, hereby declare as follows:

1. **[C]urrently** I am employed as a lawyer at Maximum Legal (California), LLP ("Maximum Legal"), which was formed on or about May 10, 2017. Except where specified otherwise, **I have personal knowledge of the facts set forth below** and, if called to testify as a witness, could and would competently testify thereto.

* * *

4. Until it ceased employing any lawyers on or about June 1, 2017, [shortly before the notice of settlement in the *Teitelbaum* action] [Layfield & Barrett] was a law firm headquartered in California, representing plaintiffs in personal injury cases

* * *

1 14. ... [Layfield & Barrett's] case management system **is** being accessed
2 by Maximum Legal to obtain information for approximately 40 active litigation
3 cases and another 40 cases in pre-litigation stages in which Maximum Legal
4 represents the plaintiff or plaintiffs.

5 * * *

6 16. Maximum Legal **is now** associated with a number of cases previously
7 handled by [Layfield & Barrett]. ...

8 17. From Saturday, July 22, to Thursday, July 27, 2017, Maximum Legal's
9 access to [Layfield & Barrett's] case management system was cut off. ...

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed this **1st day of August, 2017**, in Irvine, California.

13 /s/ Joseph M. Barrett [Case dkt. 3-1 (emphasis added)]

14 Nevertheless, although the Barrett Declaration assumes that Max Legal was in
15 existence on August 1, 2017, this Court cannot treat that assumption as a binding admission
16 by Barrett. As alleged in the Barrett Complaint, Wellgen itself asserts that Max Legal might
17 never have been validly formed, and alternatively Max Legal may have been too "short lived"
18 (in Barrett's words) to have continued its existence through the date of the *Teitelbaum*
19 settlement. In such situation, regardless whether Barrett assumed he was working for Max
20 Legal on August 1, 2017, in fact he may have been representing any clients in a different
21 capacity (presumably for Debtor, or as part of a *de facto* partnership with other attorneys, or on
22 his own). In other words, depending on the facts (and also on the uncertain law regarding
23 unfinished legal business), Barrett still might have a claim for *quantum meruit* recovery
24 regarding the *Teitelbaum* matter.

25 For the foregoing reasons this Court is not persuaded that the MTD can be granted as
26 to the *Teitelbaum* matter. The MTD will be denied by separate order.

27 ###

28 

Date: June 26, 2018

Neil W. Bason
United States Bankruptcy Judge